

SENATE BILL No. 395

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-33-8.

Synopsis: Bail. Provides that, if a court admits a defendant to bail, the court may require the defendant to do one of the following as selected by the defendant: (1) Execute a bail bond with sufficient solvent sureties. (2) Deposit securities in an amount equal to the bail. (3) Execute a bond secured by real estate in the county, where thirty-three hundredths of the true tax value less encumbrances is at least equal to the amount of the bail. (4) Execute a bail bond by depositing cash with the clerk of the court in an amount not less than 15% of the bail. Removes a provision that allows a court to require a defendant who elects to deposit cash or cash and another form of security as bail to execute an agreement that allows the court to retain all or a part of the cash to pay publicly paid costs of representation and fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted. Provides that, if an individual deposits cash to execute a bail bond: (1) the clerk shall issue the individual a receipt for the cash; and (2) the individual must possess a copy of the receipt and a valid government issued photographic identification card to receive any remission of the cash the individual may otherwise be entitled to receive. Provides that, if a defendant: (1) was admitted to bail by depositing cash or securities; and (2) has failed to appear before the court as ordered; the court shall declare the bond forfeited 120 days after the defendant's failure to appear and issue a warrant for the defendant's arrest. Specifies that, under the law concerning bail and bail procedure, a court: (1) may only declare a bond forfeited if a defendant fails to appear before the court as ordered; and (2) may not declare a bond forfeited because the defendant fails to perform any other condition of bail. Makes conforming amendments.

Effective: July 1, 2014.

Steele

January 14, 2014, read first time and referred to Committee on Judiciary.



Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 395

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-33-8-3.2, AS AMENDED BY P.L.35-2012,
2 SECTION 107, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2014]: Sec. 3.2. (a) A court may admit a
4 defendant to bail and impose any of the following conditions to assure
5 the defendant's appearance at any stage of the legal proceedings, or,
6 upon a showing of clear and convincing evidence that the defendant
7 poses a risk of physical danger to another person or the community, to
8 assure the public's physical safety:
9 (1) Require the defendant to **do one (1) of the following as**
10 **selected by the defendant:**
11 (A) Execute a bail bond with sufficient solvent sureties.
12 (B) Deposit ~~cash or~~ securities in an amount equal to the bail.
13 (C) Execute a bond secured by real estate in the county, where
14 thirty-three hundredths (0.33) of the true tax value less
15 encumbrances is at least equal to the amount of the bail.
16 ~~(D) post a real estate bond; or~~



(E) perform any combination of the requirements described in clauses (A) through (D):

(D) Execute a bail bond by depositing cash with the clerk of the court in an amount not less than fifteen percent (15%) of the bail.

If the court requires the defendant elects to deposit cash or cash and another form of security as bail, the court may require the defendant and each person who makes the deposit on behalf of the defendant to execute an agreement that allows the court to retain all or a part of the cash to pay publicly paid costs of representation and fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted: the defendant must also pay the fee required by subsection (d).

(2) Require the defendant to execute:

(A) a bail bond by depositing cash or securities with the clerk of the court in an amount not less than ten percent (10%) of the bail; and

(B) an agreement that allows the court to retain all or a part of the cash or securities to pay fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted:

If an individual deposits cash with the clerk under this subdivision, the clerk shall issue the individual a receipt for the cash. The individual must possess a copy of the receipt and a valid government issued photographic identification card to receive any remission of the cash under this chapter the individual is otherwise entitled to receive. A portion of the deposit **under clause (D)**, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, may be retained as an administrative fee. **The clerk shall also retain from the deposit under this subdivision fines, costs, fees, and restitution as ordered by the court, publicly paid costs of representation that shall be disposed of in accordance with subsection (b); and the fee required by subsection (d).** In the event of the posting of a real estate bond, the bond shall be used only to insure the presence of the defendant at any stage of the legal proceedings, but shall not be foreclosed for the payment of fines, costs, fees, or restitution. The individual posting bail for the defendant or the defendant admitted to bail under **this subdivision clause (D)** must be notified by the sheriff, court, or clerk that the defendant's deposit may be forfeited under section 7 of this chapter or retained under



subsection (b).

~~(3)~~ **(2)** Impose reasonable restrictions on the activities, movements, associations, and residence of the defendant during the period of release.

~~(4)~~ **(3)** Except as provided in section 3.6 of this chapter, require the defendant to refrain from any direct or indirect contact with an individual and, if the defendant has been charged with an offense under IC 35-46-3, any animal belonging to the individual, including if the defendant has not been released from lawful detention.

~~(5)~~ **(4)** Place the defendant under the reasonable supervision of a probation officer, pretrial services agency, or other appropriate public official. If the court places the defendant under the supervision of a probation officer or pretrial services agency, the court shall determine whether the defendant must pay the pretrial services fee under section 3.3 of this chapter.

~~(6)~~ **(5)** Release the defendant into the care of a qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court. The supervisor shall maintain reasonable contact with the defendant in order to assist the defendant in making arrangements to appear in court and, where appropriate, shall accompany the defendant to court. The supervisor need not be financially responsible for the defendant.

~~(7)~~ **(6)** Release the defendant on personal recognizance unless:

(A) the state presents evidence relevant to a risk by the defendant:

(i) of nonappearance; or

(ii) to the physical safety of the public; and

(B) the court finds by a preponderance of the evidence that the risk exists.

~~(8)~~ **(7)** Require a defendant charged with an offense under IC 35-46-3 to refrain from owning, harboring, or training an animal.

~~(9)~~ **(8)** Impose any other reasonable restrictions designed to assure the defendant's presence in court or the physical safety of another person or the community.

(b) Within thirty (30) days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of the deposit remaining under subsection ~~(a)(2)~~ **(a)(1)(D)** to the defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund established under



IC 33-40-3.

(c) For purposes of subsection (b), "disposition" occurs when the indictment or information is dismissed or the defendant is acquitted or convicted of the charges.

(d) Except as provided in subsection (e), the clerk of the court shall:

(1) collect a fee of five dollars (\$5) from each bond or deposit required under subsection ~~(a)(1)~~; **(a)(1)(A) through (a)(1)(C)**; and

(2) retain a fee of five dollars (\$5) from each deposit under subsection ~~(a)(2)~~; **(a)(1)(D)**.

The clerk of the court shall semiannually remit the fees collected under this subsection to the board of trustees of the Indiana public retirement system for deposit in the special death benefit fund. The fee required by subdivision (2) is in addition to the administrative fee retained under subsection ~~(a)(2)~~; **(a)(1) for bail bonds executed under subsection (a)(1)(D)**.

(e) With the approval of the clerk of the court, the county sheriff may collect the bail posted under this section. The county sheriff shall remit the bail to the clerk of the court by the following business day and remit monthly the five dollar (\$5) special death benefit fee to the county auditor.

(f) When a court imposes a condition of bail described in subsection ~~(a)(4)~~; **(a)(3)**:

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

SECTION 2. IC 35-33-8-4.5, AS ADDED BY P.L.171-2011, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4.5. (a) **Notwithstanding section 3.2(a)(1) of this chapter**, if bail is set for a defendant who is a foreign national who is unlawfully present in the United States under federal immigration law, the defendant may be released from custody only by posting a:

(1) cash bond in an amount equal to the bail;

(2) real estate bond in which the net equity in the real estate is at least two (2) times the amount of the bail; or

(3) surety bond in the full amount of the bail that is written by a licensed and appointed agent of an insurer (as defined in IC 27-10-1-7).

(b) If the defendant for whom bail has been posted under this section does not appear before the court as ordered because the defendant has been:



(1) taken into custody or deported by a federal agency; or
 (2) arrested and incarcerated for another offense;
 the bond posted under this section may not be declared forfeited by the court and the insurer (as defined in IC 27-10-1-7) that issued the bond is released from any liability regarding the defendant's failure to appear.

SECTION 3. IC 35-33-8-7, AS AMENDED BY P.L.105-2010, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 7. (a) If a defendant:

(1) was admitted to bail **by depositing cash or securities** under:
 (A) ~~section 3-2(a)(2)~~ **3.2(a)(1)(B) of this chapter; or**
 (B) **section 3.2(a)(1)(D)** of this chapter; and
 (2) has failed to appear before the court as ordered;
 the court shall, except as provided in subsection (b) or section 8(b) of this chapter, declare the bond forfeited ~~not earlier than~~ one hundred twenty (120) days after the defendant's failure to appear and issue a warrant for the defendant's arrest.

(b) In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case, ~~funds cash or securities~~ deposited with the clerk of the court under section ~~3-2(a)(2)~~ **3.2(a)(1)(B) or 3.2(a)(1)(D)** of this chapter may not be declared forfeited by the court, and the court shall order the deposited ~~funds cash or securities~~ to be held by the clerk. If there is an entry of final judgment in favor of the plaintiff in the civil action, and if the deposit and the bond are subject to forfeiture, the criminal court shall order payment of all or any part of the deposit to the plaintiff in the action, as is necessary to satisfy the judgment. The court shall then order the remainder of the deposit, if any, and the bond forfeited.

(c) Any proceedings concerning the bond, or its forfeiture, judgment, or execution of judgment, shall be held in the court that admitted the defendant to bail.

(d) After a bond has been forfeited under subsection (a) or (b), the clerk shall mail notice of forfeiture to the defendant. In addition, unless the court finds that there was justification for the defendant's failure to appear, the court shall immediately enter judgment, without pleadings and without change of judge or change of venue, against the defendant for the amount of the bail bond, and the clerk shall record the judgment.

(e) If a bond is forfeited and the court has entered a judgment under subsection (d), the clerk shall transfer to the state common school fund:



(1) any amount remaining on deposit with the court (less the fees retained by the clerk); and

(2) any amount collected in satisfaction of the judgment.

(f) The clerk shall return a deposit, less the administrative fee, made under section ~~3.2(a)(2)~~ **3.2(a)(1)** of this chapter to the defendant, if the defendant appeared at trial and the other critical stages of the legal proceedings.

SECTION 4. IC 35-33-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 8. (a) If a defendant was admitted to bail under section 3.2(a) of this chapter and the defendant has knowingly and intentionally failed to appear before the court as ordered, the court:

(1) shall issue a warrant for the defendant's arrest;

(2) may not release the defendant on personal recognizance; and

(3) may not set bail for the rearrest of the defendant on the warrant at an amount that is less than the greater of:

(A) the amount of the original bail; or

(B) two thousand five hundred dollars (\$2,500);

in the form of a bond issued by an entity defined in IC 27-10-1-7 or the full amount of the bond in cash.

(b) In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case, ~~funds cash or securities~~ deposited with the clerk of the court under section ~~3.2(a)(2)~~ **3.2(a)(1)(B) or 3.2(a)(1)(D)** of this chapter may not be declared forfeited by the court, and the court shall order the deposited ~~funds cash or securities~~ to be held by the clerk. If there is an entry of final judgment in favor of the plaintiff in the civil action, and if the deposit is subject to forfeiture, the criminal court shall order payment of all or any part of the deposit to the plaintiff in the action, as is necessary to satisfy the judgment. The court shall then order the remainder of the deposit, if any, forfeited.

SECTION 5. IC 35-33-8-8.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 8.5. A court:**

(1) may only declare a bond forfeited under this chapter if a defendant fails to appear before the court as ordered; and

(2) may not declare a bond forfeited because the defendant fails to perform any other condition of bail.

